Supreme Court, U.S.
FILED
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No._____

IN THE

SUPREME COURT OF THE UNITED STATES

JOSEPH CROFTS, ET AL.
Petitioner,

v.

DALLAS COUNTY HOSPITAL DISTRICT,
D/B/A PARKLAND MEMORIAL HOSPITAL
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does 42 USCA §1983 require that a plaintiff establish the existence of a "special relationship" when the actor who commits the act which forms the basis of the §1983 claim is a state actor?

2. Does a Plaintiff who does not voluntarily admit himself to a hospital and who does not posses the requisite mental capacity to voluntarily admit himself, need to establish the existence of a "special relationship" in order to bring a 42 USCA §1983 action?

3. Does a state hospital establish a "special relationship" when the hospital exerts such control over a patient as to be tantamount to incarceration?

4. Can a trial court grant a summary judgment without having considered all evidence submitted? As part of this question, can an appellate court review a summary judgment when the trial court has not considered all evidence submitted?

PARTIES

This Petition for Certiorari is filed on behalf of Joseph Crofts, Individually and as the Statutory Beneficiary of and Personal Representative of the Estate of Patrick Joseph Crofts, Deceased, who was the plaintiff in the courts below. Respondents, the defendants below, are Dallas County Hospital District, doing business as Parkland Memorial Hospital.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES	ii
TABLE OF AUTHORITIES	iv, v
OPINIONS BELOW	1
JURISDICTION	2
STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	6
CONCLUSION	13

TABLE OF AUTHORITIES

CASES PAGE

Allen, et al. v. Pennsylvania Engineering Corp.,
102 F.3d 194 (5th Cir. 1996) 12

Anderson, et al. v. Liberty Lobby, Inc., et al.,
477 U.S. 242, 106 S.Ct. 2505 (1986) 11

Christophersen, et al., v. Allied Signal Corp., et al.,
939 F.3d 1106 (5th Cir. 1991) 11

Crofts v. Dallas County Hospital District,
1998 WL 75899 (N.D.Tex.) 1

Crofts v. Dallas County Hospital District,
192 F.3d 125 (5th Cir. 1999) 2

DeShaney v. Winnebago County Department of Social Services.,
489 U.S. 189, 109 S.Ct. 998 (1989) 6

Doe v. Taylor Independent School District,
15 F.3d 443, (5th Cir. 1994), cert. Denied
513 U.S. 815, 115 S.Ct. 70, 130 L.Ed.2d 25 7

Kennedy v. Schafer,
71 F.3d 292, (8th Cir. 1995), cert. Denied,
518 U.S. 1018, 116 S.Ct. 2548, 135 L.Ed.2d 1068 9

Leffall v. Dallas Independent School District,
28 F.3d 521 (5th Cir. 1994) 7

Soley v. The Star & Harold Co., et al.,
390 F.2d 364, (5th Cir. 1968) 11

Zinermon, et al. V. Burch,
494 U.S. 113, 110 S.Ct. 975 (1990) 8

STATUTES PAGE

28 USCA § 1254 2
42 USCA § 1983 ..... 2, 5, 7, 9

MISCELLANEOUS

14TH Amendment to the Constitution of the United States 3, 6

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1999

JOSEPH CROFTS, ET AL.

Petitioner,

v.

DALLAS COUNTY HOSPITAL DISTRICT,
D/B/A PARKLAND MEMORIAL HOSPITAL

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States District Court, Northern District of Texas, Dallas Division, and the judgment of the Fifth Circuit Court of Appeals.

OPINIONS BELOW

The District Court for the Northern District of Texas, Dallas Division, entered its Judgment and Memorandum Opinion and Order on October 15, 1998. It is not reported in Federal Supplement, but is available on Westlaw at 1998 WL 75899(N.D.Tex.), and is reproduced at App.1a.

The Fifth Circuit Court of Appeals rendered their opinion on August 3, 1999. Appellant filed his Petition for Rehearing on August 17, 1999. The Fifth Circuit denied Appellant's Petition for Rehearing

17, 1999. The Fifth Circuit denied Appellant's Petition for Rehearing on September 22, 1999. The decision of the Fifth Circuit is referenced in a "Table of Decisions Without Reported Opinions." appearing in the Federal Reporter, as cited at 192 F.3d 125 (5th Cir. 1999). The opinion of the Fifth Circuit is set forth at App. 9a.

JURISDICTION

This is an appeal from an order of the Fifth Circuit Court of Appeals, therefore, this Court has jurisdiction over this matter pursuant to 28 USCA §1254, which provides in relevant part:

> "Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree."

STATUTORY PROVISIONS INVOLVED

42 USCA § 1983 states:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

Section 1 of the 14th Amendment to the Constitution of the United States, provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

STATEMENT OF THE CASE

This case concerns the death of Mr Patrick Joseph Crofts, hereinafter referred to as "Joey". Joey's death occurred at Dallas County Hospital District's Parkland Memorial Hospital, hereinafter referred to as "Parkland," a governmental entity.

On June 27, 1994, the Dallas Police found Joey on a roadside, badly beaten, suffering from a severe head injury, half-clothed, in a disoriented state, without any identification, and suffering from memory loss. The police took Joey to Parkland, where Joey was admitted under the name "Mr. W."[1/] and where treatment was commenced.

Joey's sister, Suzy Crofts, who lived in Austin, Texas, was in Dallas looking for her missing brother. On the 8th or 9th of July, 1994, in response to media reports, some of Joey's friends identified Joey. Suzy immediately called Joey's father, Joseph Crofts, who was then living in San Antonio, Texas, to report the good news that Joey had been found and was in Parkland. Parkland was informed that Joey had a significant history of psychological problems, and that he had attempted to commit suicide on numerous occasions. While at Parkland, Joey's frequent attempts to injure himself, his disoriented

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1/ Joey did not have any identification and Joey was unable to provide any information to the doctors because of his head injury and mental condition.

condition and constant combative nature, prompted a physician at Parkland to order one-to-one observation of Joey. One-to-one observation requires Parkland staff to maintain constant around-the-clock surveillance and supervision of Joey.

Parkland then placed Joey in a second floor room that did not have a secured window. On July 13, 1994, a Parkland staff member (a "sitter"), who was assigned to carry out Joey's one-to-one observation, was instructed by her nurse supervisor (also a Parkland employee) to leave Joey alone in his room. This instruction from the nurse was in direct violation of the doctor's one-to-one order. Although she should not have done so, the sitter left Joey alone and unsupervised. Joey then climbed through the window and jumped to the pavement below suffering serious injuries. Joey suffered from the injuries sustained in the jump from July 13th until September 2, 1994, at which time he died.

Specifically, it is undisputed that the Dallas police picked Joey up and took him to Parkland, not at Joey's request. Joey was received by Parkland badly beaten, suffering from a severe head injury, and in a state of confusion and disorientation. Joey never reached a point during his detention at Parkland where has was thinking clearly, coherently, or responding appropriately.

Restraints were ordered by the physicians from the onset of Joey's detention in Parkland.

The day after Joey's arrival at Parkland, he was still unable to provide his name or any contacts. He was "extremely combative" and was continued in restraints.

Joey's condition did not improve, and restraints were maintained. On July 6, 1994, the nurse's notes indicate that Joey required constant supervision. Joey became unruly and the staff could not restrain him. On July 8, 1994, one-to-one observation was initiated. A SIGN WAS TAPED TO JOEY'S BACK STATING: "IF FOUND ALONE, PLEASE NOTIFY 2 EAST 590-2740"

By July 12, 1994, Joey's family had been contacted and Parkland learned that Joey had a chemical imbalance and manic depression.

On July 13, 1994, at 11:15 a.m., Joey was found off the ward. Parkland staff returned him to his room. The sitter was told by her supervisor to leave Joey by himself and go out into the hall. While the sitter was in the hall, Joey jumped from his window, suffering fatal injuries.

As a result, Joseph Crofts filed a suit against Parkland pursuant to 42 U.S.C.A. §1983. In that suit, Joseph Crofts alleged, among other things, that Parkland had violated Joey's constitutional rights by having untrained, poorly trained and/or poorly supervised employees and staff, which lack of training and supervision resulted in Joey's death.

Parkland filed a motion for summary judgment in the trial court. The trial court granted Parkland's summary judgment finding that Joey had failed to establish a "special relationship" which the trial court felt was required under 42 U.S.C.A. §1983. In response to Parkland's motion for summary judgment, Joseph Crofts filed an affidavit from an expert, Dr. William Nellis ("Nellis"). During the time the summary judgment was pending, Nellis was out of town and not available to supply his affidavit. Joseph Crofts timely filed his response to Parkland's motion for summary judgment, and as soon as Nellis was available to provide his affidavit, Joseph Crofts filed a motion with the trial court requesting leave to supplement his response with Nellis' affidavit. The affidavit criticized Parkland's facilities, and the training and supervision of Parkland's staff as related to Joey's case, opining that the facilities, training and supervision of the staff, were inadequate and below standards of care. (Nellis' affidavit is attached to Crofts' Motion to Supplement Response to Motion for Summary Judgment, and is reproduced at App. 16a).

The trial court entered judgment in favor of Parkland, finding that Joseph Crofts had failed to establish a "special relationship" between Joey and Parkland. Specifically, the trial court declined to consider the controverting affidavit in Crofts' motion to supplement his

response to Parkland's summary judgment saying that, since the court was granting summary judgment based upon the issue of the "special relationship", the court need not consider the affidavit in Crofts' motion to supplement his response. See the trial court's judgment and memorandum and order set forth at App 1a.

Joseph Crofts appealed the decision of the trial court to the Fifth Circuit Court of Appeals. The Firth Circuit held that Joseph Crofts failed to provide evidence that the training was inadequate, and that therefore the Fifth Circuit was affirming the trial court. The Fifth Circuit did not rely on the issue of "special relationship" in affirming the trial court. See the Fifth Circuit opinion set forth at App. 9a.

REASONS FOR GRANTING THE WRIT

A basic foundation of our Constitution is the recognition and protection of an individual's civil rights and liberties. The 14th Amendment guarantees that a "state" will not violate these rights without due process. In this case, Joey's constitutionally protected right to be free from state occasioned bodily harm, and indeed his right to life, were violated by the actions of the state without due process.

The trial court found that Joey was required to establish the existence of a "special relationship" between himself and Parkland. Although this issue has been previously raised in cases with facts dramatically similar to Joey's, this Court has not clearly defined the rights of citizens in Joey's situation.

The trial court's finding that Joey must establish a "special relationship" flies in the face of well established law, and the language of the 14th Amendment. In *DeShaney v. Winnebago County Department of Social Services.*, 489 U.S. 189, 109 S.Ct. 998 (1989), this Court held that the state is not required to protect the life, liberty, and property of its citizens against invasion by ***private actors.*** This Court also held that the "Due Process Clause" forbids the State ***itself*** to deprive individuals of life liberty, or property, but does not require the State to protect these rights from being harmed through ***other means.***

Even the Fifth Circuit, where the trial court sits, has held that a State's failure to protect an individual against ***private violence*** does not constitute a violation of the "Due Process Clause." *Leffall v. Dallas Independent School District,* 28 F.3d 521 (5th Cir. 1994). The *Leffall* Court went on to note that, as a general rule, the State is not liable for failing to protect an individual's rights from ***private violence***, but if the individual could show a "special relationship", then an exception to the general rule would be justified.

Specifically, the Fifth Circuit held that the "special relationship" doctrine is "properly invoked in cases involving harms inflicted by ***third parties***, and it is ***not applicable*** when it is the ***conduct of a state actor*** that has allegedly infringed a person's constitutional rights." (Emphasis added). *Doe v. Taylor Independent School District,* 15 F.3d 443, (5th Cir. 1994), cert. Denied 513 U.S. 815, 115 S.Ct. 70, 130 L.Ed.2d 25.

All of the acts about which Crofts complains in the Petition, were acts committed by employees of Parkland - State Actors. The failure to properly train the nurse supervisor and the sitter are the State's responsibility. The failure of the nurse supervisor to properly supervise the sitter is a state actor's actions. Violations of Parkland's doctors' orders is a state actor's actions. No third party or private party is involved. It is Petitioner's position that the existence of a "special relationship" need not be shown in this case. The Fifth Circuit however, has improperly placed a burden on Joey, and others similarly situated, to establish the existence of a "special relationship" when the acts complained of were committed by state actors.

Therefore, the question presented to this Court is whether Joey, under these facts, needs to establish the existence of a "special relationship", or whether the fact that the acts were committed by State Actors sufficient to form a basis for a 42 U.S.C.A. §1983 claim without the need of a "special relationship."

That leads to Petitioner's next question, which is whether a patient in Joey's mental condition, needs to establish a "special relationship."

Joey was not a voluntary patient of Parkland. The police took Joey to Parkland. Joey never had the mental capacity to voluntarily admit himself at any time during his stay at Parkland. The control that Parkland exercised over Joey was not that normally associated with a mentally competent voluntary patient. The control that Parkland exercised was more like that found in a prison. Joey's inability to leave Parkland at will is most vividly demonstrated by the existence of the sign Parkland attached to Joey's back, requiring a reporting if Joey was spotted anywhere other than his ward, of if he were found alone.

It must be noted that Joey never recovered sufficiently to warrant lifting of the one-to-one observation established by Parkland. Additionally, Parkland had been told that Joey had a history of chemical imbalance and severe mental illness (a bipolar condition). Joey was not voluntarily admitted to Parkland. In fact, quite the opposite. Joey was taken by police to the hospital in a badly beaten and confused state. So he remained until the time of his jump. It is all but conceded that Joey was an involuntary patient.

This Court has previously ruled that a patient who lacks the mental capacity to make his own decisions, cannot be a voluntary patient of a hospital. *Zinermon, et al. V. Burch,* 494 U.S. 113, 110 S.Ct. 975 (1990).

The facts of the Burch case are again remarkably similar to Joey's facts. Burch was found wandering along a Florida Highway, appearing to be hurt and disoriented. He was taken to a private mental health care facility designated by the State to receive patients suffering from mental illness. Burch was hallucinating, confused and psychotic. His face and chest were bruised and bloodied, suggesting that he had fallen or been attacked. Burch was asked to sign forms giving consent to voluntary admission, which he signed. After three days in the hospital, the staff determined that Burch needed long-term stabilization, and Burch was referred to Florida State Hospital ("FSH"), where he was again asked to sign voluntary admission forms, and he did.

After his release from FSH some five months later, Burch sued under §1983 alleging he had been improperly detained. This Court determined that Burch could not have been a voluntary patient because of his mental condition.

As can be seen, the Burch case is factually very similar to Joey's case. Petitioner believes that Joey could not be a voluntary patient, and therefore, does not need to establish the existence of a "special relationship". The Court should review Joey's case to clarify whether Joey, or others like him, need to establish a "special relationship" in order to prosecute a §1983 claim.

Although it is Petitioner's position that, since the actions complained of in the underlying suit are actions by state actors, the existence of a "special relationship" is not required in order to prosecute a claim pursuant to 42 U.S.C.§ 1983 against Parkland, the facts of this case establish such a "special relationship". The question that Petitioner would present to this Court is whether the control exercised by Parkland over Joey is sufficient to establish a "special relationship" if one were needed.

The Eighth Circuit had an opportunity to address issues similar to those in Joey's case. In *Kennedy v. Schafer,* 71 F.3d 292, (8th Cir. 1995), cert. Denied, 518 U.S. 1018, 116 S.Ct. 2548, 135 L.Ed.2d 1068, the Eighth Circuit sent the case back to the trial court to determine if Kathleen, the plaintiff below, could have been detained by the hospital, even after a request for discharge.

In the *Kennedy* case, Kathleen was voluntarily admitted at her parents' request to Hawthorn Children's Psychiatric Hospital. Before admission, she had been a psychiatric patient at a private hospital. Kathleen remained at Hawthorne for several months, but then, due to her mental condition and expressed desire to commit suicide, she was placed on one-to-one constant staff supervision. During one shift, one-to-one was not carried out and Kathleen took advantage of the lack of observation and hung herself.

The Eighth Circuit was persuaded by the theory that it was not the manner in which a patient enters a hospital that is dispositive, but rather the amount of control the hospital state actors exert over the patient. Regarding the hospital's control over Kathleen, the Court there said that they "doubt they would have released a patient who presented a risk of suicide so great that her doctors required the nursing staff to keep her constantly in their sight". The Appellate Court sent the case back to the trial court to determine whether Hawthorne had the right to keep Kathleen, even if a proper request for release were made.

Kathleen's plight is very similar to Joey's. The amount of control exercised by Parkland over Joey is substantially similar, if not more controlling, than that Kathleen endured. The Eighth Circuit sent the case back down for a determination of the extent of control, and whether it was sufficiently similar to incarceration to provide protection under § 1983. Joey would ask this Court to define and clarify whether the control exerted in Joey's case is the same as incarceration.

Petitioner's last question concerns the action of the Appellate Court in reviewing the decision of the trial court. In this case, Crofts had evidence that the hospital staff was inadequately trained and supervised. An affidavit from Crofts' expert (*see* Nellis' affidavit at App. 16a) was presented to the trial court by Crofts in a Motion to Supplement Response to Motion for Summary Judgment. The trial court declined to consider Crofts' controverting affidavit, instead stating that the trial court was granting summary judgment in Parkland's favor because Crofts failed to establish a "special relationship". The Appellate Court did not address the issue of the "special relationship" in its opinion, but rather, ruled that Crofts had not established <u>any</u> evidence of lack of training. Crofts filed a timely motion for rehearing in the Fifth Circuit pointing out the fact that the trial court had not reached the issue of inadequate training. The rehearing was denied.

The conflicting actions of the trial and Appellate Courts have put Crofts in an unusual situation. Crofts did present evidence of inadequate training and supervision to the trial court. The trial court

refused to consider Crofts' controverting affidavit stating that it did not need to consider such evidence as it was finding in favor of Parkland on a dispositive issue (the "special relationship") that did not require reaching any evidentiary issues. The Appellate Court then rules that Crofts failed to present any evidence of lack of training, the exact evidence Crofts presented to the trial court in his Motion to Supplement Response to Summary Judgment, but which evidence the trial court did not consider. In fact the trial court specifically stated that it was not pertinent to the trial court's decision. The result is that the Appellate Court did not consider competent evidence that was presented to the trial court because the trial court did not reach the issue the Appellate Court reached, and the trial court refused to consider Crofts' evidence regarding that specific evidentiary issue.

The trial court had before it an affidavit that put training and supervision of Parkland employees at issue. This Court has previously held that, at the summary judgment stage, a trial judge is not to weigh evidence and determine the truth of the matter, but rather to determine whether there is a genuine issue for trial. *Anderson, et al. v. Liberty Lobby, Inc., et al.*, 477 U.S. 242, 106 S.Ct. 2505 (1986). It would not be possible for a trial court to follow these guidelines without first considering all of the evidence.

The 5th Circuit has held that before a summary judgment can be granted, the trial judge must be convinced that there is no genuine issue as to any material fact. *Soley v. The Star & Harold Co., et al.*, 390 F.2d 364, (5th Cir. 1968). He may not overlook a factual issue. *Solely*, supra at 366. In Joey's case, the trial court had evidence before it which it ignored. This resulted in a record that was not completely defined for the appellate court.

The court of appeals, when reviewing a summary judgment, must first review the trial court's evidentiary rulings, which rulings define the summary judgment record. *Christophersen, et al., v. Allied Signal Corp., et al.*, 939 F.3d 1106 (5th Cir. 1991). If the trial court has failed to consider evidence, then the appellate court cannot review the summary judgment, as the record will not have been defined by the

trial court. *See also Allen, et al. v. Pennsylvania Engineering Corp.*, 102 F.3d 194 (5th Cir. 1996).

In Joey's case, the trial court did not consider Crofts' controverting affidavit. The record for review, then, had not been defined. The appellate court could not review the record properly because the record had yet to be defined. Joey had filed a competent affidavit which raised a genuine issue of fact. The trial court should not have granted summary judgment without considering the evidence submitted. The appellate court should have sent the case back to the trial court to define the summary judgment record.

Petitioner's would ask this Court to clarify whether a trial court can grant summary judgment without having considered all the evidence submitted and without having ruled on the admissibility of said evidence. Also, Petitioner's would ask this Court to further clarify whether an appellate court can review a summary judgment when the trial court has not considered all of the evidence submitted. As can be seen by the facts detailed above, failure to consider all evidence that has been presented to the trial court, results in conflicting findings in the trial court and the Appellate Court.

CONCLUSION

When the trial court in Joey's case granted summary judgment, it did so in the face of overwhelming precedent. The Fifth Circuit, in affirming, has allowed for a change in the principles and rights provided by the Due Process Clause by placing a burden on Joey, and all others like him to follow, that is clearly not required by the Constitution, or case law. This judicial erosion of legislatively enacted law, the foundation of our Constitutional rights, should not be permitted to occur, and this Court should review this case to clearly establish whether or not the trial and appellate courts can erode these rights.

Further, this Court should review the actions of the trial and appellate courts. The trial court should not be permitted to grant summary judgment without considering all the evidence submitted. The appellate court should not review the trial court's summary judgment ruling until all evidentiary issues have been resolved.

For the forgoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully Submitted,

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APPENDICES

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

[Filed Oct. 14, 1998]

JOSEPH CROFTS,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 3:96-CV-2593-D
	§	
DALLAS COUNTY HOSPITAL DISTRICT, et al.,	§	
	§	
	§	
Defendants.	§	

JUDGMENT

For the reasons set out in memorandum opinions and orders filed February 17, 1998 and today, and an order filed March 9, 1998, it is ordered and adjudged that plaintiff's federal-law claim against defendant Dallas County Hospital District ("DCHD") is dismissed with prejudice, and his state-law claim against DCHD is dismissed without prejudice; his action against defendants Jerome Schrapps, M.D. and Ron J. Anderson, M.D. is dismissed with prejudice; and his action against defendant Jay Bradford Pracyk, M.D. is dismissed without prejudice.

Taxable costs of court, as calculated by the clerk of court, are assessed against plaintiff.

Done at Dallas, Texas this 14th day of October, 1998.

/s/Sidney A. Fitzwater
SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

[Filed Oct 14 1998]

JOSEPH CROFTS,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 3:96-CV-2593-D
	§	
DALLAS COUNTY HOSPITAL DISTRICT, et al.,	§	
	§	
	§	[Entered on Docket Oct 15 1998]
Defendants.	§	

MEMORANDUM OPINION
AND ORDER

In this 42 U.S.C. § 1983 action by plaintiff Joseph Patrick Crofts ("Crofts") alleging violations of the Fourteenth Amendment Due Process Clause and a pendent state-law claim, defendant Dallas County Hospital District ("DCHD") moves for summary judgment.[2/] For the reasons that follow, the court grants the motion as to Crofts' § 1983 claim and declines to exercise jurisdiction over his state-law claim.[3/]

[2/] DCGD also moves pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss for failure to state a claim on which relief can be granted, and pursuant to Rule 12(c) for judgment in the pleadings. Because the court holds that DCHD is entitled to summary judgment, it will not address the balance of DCHD's motion.

[3/] On September 10, 1998 Crofts moved to supplement his response with an affidavit from William L. Nellis ("Nellis"), in which he opines regarding the adequacy of DCHD's policies, supervision, and training programs. Because the court is deciding the summary judgment motion on other grounds, it need not consider this affidavit and therefore denies the motion to supplement. In view of this ruling, DCHD's September 25, 1998 motion to strike the Nellis affidavit is denied as moot.

I.

The background facts of this case are set out in the court's February 17, 1998 memorandum opinion and order and need not be repeated at length. *See Crofts v. Dallas County Hos. Dist.*, 1998 WL 75899, at *2 (N.D. Tex. Feb. 17, 1998) (Fitzwater, J.). In June 1994 Dallas Police Department officers brought a disoriented and unidentified individual known only as "Mr. W," later identified as Patrick Joseph Crofts ("Joey"), to Parkland Memorial Hospital ("Parkland"). Parkland is a public hospital operated by DCHD. Joey had been found half-clothed, badly beaten, and suffering from memory loss. Once Joey was identified, his family members and friends informed Parkland personnel that he had a history of manic depression and bipolar disorder, had been taking prescribed medicine, and had attempted suicide in the past. During his stay, Joey's condition improved only slightly, requiring that Parkland place him under 24-hour surveillance and supervision. Following its policies, Parkland placed Joey under one-to-one observation to provide that level of supervision by hospital personnel.

Parkland personnel assigned Joey to a second floor room with an unsecured window. On July 13, 1994 a nurse directed a patient care technician, per Joey's request, to sit outside Joey's room. While the technician was doing so, Joey climbed through a window and fell to the pavement below, sustaining in the process severe injuries to his spine, ankles, and feet. Following extensive surgery, Joey was placed in a body cast.

At the end of July, Joey suffered a heart attack that left him brain dead. Joey's father, plaintiff Crofts, consented to a "do not resuscitate" order if Joey again suffered cardiac arrest. In late August, Jerome Schrapps, M.D. ("Dr. Schrapps")[4] telephoned Crofts to request that he decide whether an endotracheal tube should be removed from Joey. Crofts consented to the removal of the endotracheal tube but not to removal of hydration and nourishment tubes. Crofts later learned, however, that hospital personnel had extracted all tubes. Crofts

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[4] In its February 17, 1998 opinion the court dismissed Crofts' claim against Dr. Schrapps. *See Crofts*, 1998 WL 75899, at *5.

telephoned Dr. Schrapps, who assured him that Joey would again be hooked up to the hydration and nourishment tubes. A few days later, Parkland moved Joey to a less-supervised room. He died on September 2, 1994.

Crofts later sued DCHD and other defendants, alleging that they were liable for Joey's death. Following entry of the court's February 17, 1998 opinion, and a March 9, 1998 order dismissing Crofts' action against an unserved defendant, Crofts amended his compliant against DCHD to allege that it deprived Joey of his due process rights.[5/] DCHD now moves for summary judgment.

II.

Before reaching the merits of DCHD's summary judgment motion, the court must address a threshold matter Crofts' September 3 1998 motion to extend discovery deadline and for continuance.

Fed. R. Civ. P. 56(f) authorized a continuance "[s]hould it appear from the affidavits of a party opposing the motion that [the party] cannot for reasons stated present by affidavit facts essential to justify [the party's] opposition." The Rule is an essential ingredient of the federal summary judgment scheme, and provides a mechanism for dealing with the problem of premature summary judgment motions. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986) The continuance authorized by Rule 56(f) is a safe harbor built into the rules so that summary judgment is not granted prematurely *Union City Barge Line Inc. v. Union City Barge Line, Inc. v. Union Carbide Corp.*,

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5/ Crofts alleges that DCHD "violated" § 1983. *See* Am. Compl. ¶25. As this court has noted several times, including in its decision in *Woody v. City of Dallas*, No. 3:90-CV-1294-D, slip op. at 3. n. 1 (N.D. Tex. July 20, 1992) (Fitzwater, J.):

> 42 U.S.C. § 1983 cannot be "violated," of course. It is not a substantive provision that confers civil rights, but is a remedial statute that makes those who act under color of state law, and who violate another's federally secured rights, liable for their actions.

823 F.2d 129, 136 (5th Cir. 1987). To comply with the rule, the party opposing summary judgment need only file the specified non-evidentiary affidavit, explaining why it cannot oppose the summary judgment motion on the merits. *Id.* Nevertheless, a claim that further discovery or a trial might reveal facts of which the nonmovant is currently unaware is insufficient. *Washington v. Armstrong World Indus., Inc.*, 839 F.2d 1121, 1123 (5th Cir. 1988). The party may not rely on vague assertions that additional discovery will produce needed, but unspecified, facts, *Union City*, 823 F.2d at 137, but must instead identify a genuine issue of material fact that justifies the continuance pending further discovery. *See Woods v. Federal Home Loan Bank Bd.*, 826 F.2d 1400, 1415 (5th Cir. 1987). A party seeking a continuance of a motion for summary judgment must demonstrate why it needs additional discovery and how the additional discovery will create a genuine issue of material fact. *Krim v. BancTexas Group, Inc.*, 898 F.2d 1435, 1442 (5th Cir. 1993). It must show a genuine issue of material fact that requires postponement for discovery *see McCarty v. United States*, 929 F.2d 1085, 1088 (5th Cir. 1991), and must present specific facts explaining its inability to make the substantive response required by Rule 56(e), *see Solo Serve Corp. v. Westowne Assoc.*, 929 F.2d 160, 167 n. 25 (5th Cir. 1991).

Having considered the relevant Rule 56(f) jurisprudence, the court concludes that Crofts should not be granted an extension of the discovery deadline or a continuance of DCHD's summary judgment motion. First, Crofts has failed to satisfy the requirements addressed above. Crofts seeks discover and a continuance to obtain depositions of the sitter, the nurse in charge of the sitter, and a hospital administrator. Crofts has not identified, however, why he needs additional discovery or how the additional discovery will create a genuine issue of material fact. Further, he has not presented specific facts explaining his inability to make the substantive response required by Rule 56. Instead, he merely asserts that the deposition testimony will allow the court to have the full picture of all the relevant facts of the case. Summary assertions of this type are insufficient to warrant a continuance or an extension of discovery deadlines.

Second, summary judgment is properly entered against a party if after adequate time for discovery, he fails to establish the existence of an element essential to his case and as to which he will bear the burden of proof at trial. *Celotex*, 477 U.S. at 322-23. Crofts has failed to explain why the time allotted for discovery is insufficient. Crofts filed this action on September 3, 1996. On December 2, 1997 the court extended the discovery deadline to July 1, 1998. Crofts has not offered a viable explanation for why he has not taken a deposition during the two years that the case has been pending.

Third, for reasons the court explains below, the court is dismissing Crofts' § 1983 claim on the ground that DCHD did not owe a constitutional duty to Joey. Crofts has not delineated the facts that he intends to obtain from the witnesses in question, and the court concludes that their testimony will not affect its ruling. Because Crofts must demonstrate that the discovery he seeks is calculated to produce evidence of a genuine issue of material fact, *see McCarty*, 929 F.2d at 1088, there is no good cause to delay consideration of DCHD's motion.

Accordingly, the court denies Crofts' motion to extend discovery deadline and for a continuance.

III.

The court now turns to the merits of Crofts' § 1983 claim for deprivation of Joey's Fourteenth Amendment due process rights.

To succeed on a § 1983 claim, Crofts must prove a violation of Joey's rights secured by the Constitution or the laws of the United States. *See West v. Atkins*, 487 U.S. 42, 48 (1988); *Leffall v. Dallas Indep. Sch. Dist.*, 28 F.3rd 521, 525 (5th Cir. 1994). As the court noted in its prior opinion in this case, the state generally does not have a constitutional duty to furnish substantive services, such as providing a person with a safe and humane environment or preventing a person from injuring himself, for people living within its borders. *See Crofts*, 1998 WL 75899, at *2. The few exceptions to this rule occur when the state deprives a citizen of his liberty so that he is unable to care for himself. *Walton v. Alexander*, 44 F.3rd 1297, 1302 (5th Cir. 1995).

These exceptions are premised on the finding of a special relationship in which the state has imposed a limitation on the individual's freedom to act on his own behalf. *Bogle v. City of Warner Robins*, 953 F. Supp. 1563, 1566 (M.D. Ga. 1997)(citing *Deshaney v. Winnebago County Dep't of Soc. Servs.*, 489 U.S. 189, 199-200 (1989)). Such a relationship exists when the state affirmatively restrains a person's liberty "through incarceration, institutionalization, or other similar restraint." *Deshaney*, 489 U.S. at 200. This language is followed strictly so that the state creates a special relationship only when the person is involuntarily taken into state custody and held against his will through the affirmative power of the state. *Walton*, 44 F.3d at 1303-04.

The court has already held that Crofts cannot establish the existence of a special relationship with DCHD. At the time of the alleged constitutional violations, Joey was neither incarcerated nor involuntarily committed. *See Crofts*, 1998 WL 75899, at *3. There is no evidence that DCHD ever had custody of Joey involuntarily or against his will. *See id.* Moreover, Crofts has failed to adduce any evidence that would permit a reasonable trier of fact to find that Joey was restrained from leaving upon his request or at the request of someone legally authorized to act for him. *See id.* at *3-*4. Finally, DCHD's custodial control over Joey while he was in Parkland is insufficient to support the finding of a special relationship. *See id.* at *4. Because Crofts has not introduced evidence that would permit a reasonable trier of fact to find that there was a special relationship between Joey and DCHD, it necessarily follows that Crofts has failed to establish a Fourteenth Amendment due process violation that is redressible pursuant to § 1983. *See id.* at *5; *see also Leffall*, 28 F.3d at 525.

Accordingly, the court dismisses Crofts' § 1983 claim against DCHD.

IV

The court next turns to Crofts' pendent state-law claim. Having dismissed Crofts' federal-law claim, the court now dismisses his pendent state-law claim, without prejudice.

The court may exercise supplemental jurisdiction over the state-law claim pursuant to 28 U.S.C. § 1367(a). *See Cedillo v. Valcar Enters. & Darling Del. Co.*, 773 F. Supp. 932, 938-42 (N.D. Tex. 1991) (Fitzwater, J.) (discussing supplemental jurisdiction). The court may also decline to exercise such jurisdiction where, as here, the claims that permitted original jurisdiction have dropped out of the case. *See* 28 U.S.C. § 1367(c)(3) (court may decline to exercise supplemental jurisdiction where it has dismissed all claims over which it has original jurisdiction). In the exercise of its discretion, the court declines to consider the merits of defendants' motion on the state-law claim, and instead dismisses it without prejudice.

DCHD's motion for summary judgment is granted. Crofts' § 1983 claim is dismissed with prejudice. His state-law claim is dismissed without prejudice. The court has filed a final judgment of dismissal today.

SO ORDERED.

October 14, 1998.

/s/ SIDNEY A. FITZWATER
SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

[Filed Aug. 03, 1999]

No. 98-11269

(Summary Calendar)

JOSEPH CROFTS, Individually and as Statutory Beneficiary of and Personal Representative of Estate of Patrick Joseph Crofts, Deceased,

Plaintiff-Appellant,

versus

DALLAS COUNTY HOSPITAL DISTRICT, etc; ET AL,

Defendants,

DALLAS COUNTY HOSPITAL DISTRICT, doing business as Parkland Memorial Hospital; JEROME SHRAPPES, MD, in his personal capacity; RON J. ANDERSON, MD, in his personal and official capacity,

Defendants-Appellees

Appeal from the United States District Court
For the Northern District of Texas
USDC No.: 3:96-CV-2593-D

Before EMILIO M. GARZA, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:[1]

Joseph Crofts appeals the district court's summary judgment dismissal of his 42 U.S.C.§ 1983 claim against Dallas County Hospital District ("DCHD"). Crofts argues that DCHD's failure to properly train and supervise its employees caused the deprivation of the constitutional rights of his now-deceased son, Patrick Joseph Crofts.

We review a grant of summary judgment *de novo*, using the same standard of review as did the district court. *See Matagorda County v. Law*, 19 F.3d 215, 217 (5th CIR. 1994). Summary Judgment is proper when, viewing the evidence in the light most favorable to the nonmovant, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See id.*; FED. R. CIV. P. 56(c). If the moving party meets the initial burden of establishing that there is no genuine issue, then the burden shifts to the nonmoving party to produce evidence of the existence of a genuine issue for trial. *See Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th CIR. 1994) (en banc) (per curiam). The nonmovant cannot satisfy his summary judgment burden with conclusional allegations, unsubstantiated assertions, or only a scintilla of evidence. *See id.*

"To establish county/municipal liability under 1983 . . . a plaintiff must demonstrate a policy or custom which caused the constitutional deprivation." *Colle v. Brazos County, Tex.*, 981 F.2d 237, 244 (5th CIR. 1993) (footnotes omitted). A municipality's failure to properly train its employees can be a policy or custom giving rise to § 1983 liability. *See City of Canton, Ohio v. Harris*, 489 U.S. 387, 387, 109 S. Ct. 1197, 1204, 103 L. Ed. 2d 412 (1988). However, a municipality is liable under this theory only if it is proven that : (1) the training procedures of the municipality's policymaker were inadequate;

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[1] Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

(2) the municipality's policymaker was deliberately indifferent in adopting the training policy, and (3) the inadequate training policy directly caused the constitutional deprivation. *See Baker v. Putnal*, 75 F.3d 190, 200 (5th Cir. 1996).

Crofts has failed to establish a genuine issue of fact regarding the first required element of his claim, the inadequacy of DCHD's training procedures. Crofts has failed to produce any evidence regarding either DCHD's procedures for training hospital personnel or the deficiencies of such procedures. Instead, Crofts argues that the hospital personnel's failure to comply with hospital policy in caring for Joey is itself proof that DCHD failed to properly train its employees. This conclusional assertion cannot satisfy Croft's summary judgment burden. Accordingly, the district court did not err in granting summary judgment to DCHD.

We AFFIRM the judgment of the district court.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOSEPH CROFTS, Individually and as the statutory beneficiary of and personal representative of the Estate of PATRICK JOSEPH CROFTS, Deceased	§	
	§	Civil Action No. 3-96-CV-2593
v.	§	JURY
DALLAS COUNTY HOSPITAL DISTRICT d/b/a PARKLAND MEMORIAL HOSPITAL	§	

MOTION TO SUPPLEMENT PLAINTIFFS' RESPONSE TO MOTION FOR SUMMARY JUDGMENT FILED BY DALLAS COUNTY HOSPITAL DISTRICT d/b/a PARKLAND MEMORIAL HOSPITAL

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW JOSEPH CROFTS, Individually and as the statutory beneficiary and as personal representative of the Estate of PATRICK JOSEPH CROFTS, Deceased ("Plaintiffs"), in the above-numbered and entitled cause and file this their Motion to Supplement Plaintiffs' Response to Motion for Summary Judgment Filed by Defendant Dallas County Hospital District d/b/a Parkland Memorial Hospital ("Motion"), and for grounds therefore would respectfully show unto the Court as follows:

1. Plaintiffs have retained an expert witness, William L. Nellis, to assist them in this case. Mr. Nellis has previously been named as an expert in this case.

2. Defendant filed its motion for summary judgment on August 18. Copy was received by Plaintiffs' attorney on or about August 24, 1998.

3. Plaintiffs' response was due on September 8, 1998.

4. During the 20 days, the Plaintiffs' attorney attempted to contact Mr. Nellis for an affidavit in support of Plaintiffs' Response to Defendant's Motion for Summary Judgment. Mr. Nellis was on vacation and was not contactable by the undersigned starting on August 23, and did not return until September 1. His office was then again closed from September 4 through September 7, which was Labor Day. On September 8, the undersigned was able to contact Mr. Nellis regarding his affidavit in support of Plaintiffs' Response to Defendant's Motion for Summary Judgment Mr. Nellis prepared his affidavit and on September 9, 1998, sent the affidavit by Federal Express to attorneys for the Plaintiffs. Plaintiffs received the affidavit approximately 11:00 a.m. on September 10, 1998, and filed the affidavit, along with this Motion, on September 10, 1998.

5. The affidavit of Mr. Nellis is attached hereto as Exhibit A, which sets for the facts and opinions Mr. Nellis has concerning the events leading to Mr. Patrick Joseph Crofts' death. The facts contained in his affidavit support the Plaintiffs' Response to Defendant's Motion for Summary Judgment, and support the Plaintiffs' contention that the Defendant Dallas County Hospital District d/b/a Parkland Memorial Hospital failed to properly train its employees and failed to properly supervise its employees, and failed to have a proper policy in place to ensure the safety and bodily integrity of Joseph Patrick Crofts, and misused tangible real and/or personal property, to wit: the room, window and restraints.

6. Pursuant to Rule 56(f) Federal Rules of Civil Procedure, Plaintiffs move this Court grant them a continuance sufficient to file

this affidavit to support their Response to Defendant's Motion for Summary Judgment.

7. Because of the time of the filing of Defendant's Motion for Summary Judgment and the absence of Plaintiffs' expert during the time the summary judgment was pending, Plaintiffs say that they have received the affidavit to support their Response to Defendant's Motion for Summary Judgment as quickly as they could and have filed it as quickly as possible. Plaintiffs would pray that the Court would permit them to supplement their Response to Defendant's Motion for Summary Judgment by including the affidavit of Mr. William L. Nellis as part of their response.

8. This Motion is sought not for delay but so that justice may be served.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs JOSEPH PATRICK CROFTS, Individually and as the statutory beneficiary of and personal representative of the Estate of PATRICK JOSEPH CROFTS, Deceased, pray this Court allow Plaintiffs to supplement their Response to Defendant's Motion for Summary Judgment by adding the affidavit of Mr. William L. Nellis; and for such other and further relief to which they may be justly entitled, at law or in equity, and for which they shall ever pray.

Respectfully submitted,

VERNER, LIIPFERT, BERNHARD, McPHERSON AND HAND, CHARTERED

By:_____

Michael D. Sydow
Bar No. 19592000
Rick A. Eckerson
Bar No.00793671
1111 Bagby, Suite 4700

Houston, Texas 77002
(713) 225-7200
(713) 752-2199 Facsimile
ATTORNEY-IN-CHARGE FOR
THE PLAINTIFFS

CERTIFICATE OF CONFERENCE

I, Ronald J. Kormanik, attorney in the offices of Michael D. Sydow, have contacted Thomas L. Cox, Jr., counsel for Defendant, asking Defendant for permission to supplement Plaintiffs' Response to Defendant's Motion for Summary Judgment. Thomas L. Cox, Jr. is opposed to this Motion.

Ronald J. Kormanik

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been forwarded to all counsel of record on this the 10th day of September, 1998.

Thomas L. Cox, Jr.
Parkland Memorial Hospital
5201 Harry Hines Boulevard
Dallas, Texas 75235

Rick A. Eckerson

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOSEPH CROFTS, INDIVIDUALLY, and as the statutory beneficiary of and personal representative of the estate of Patrick Joseph Crofts, deceased — PLAINTIFFS

VERSUS — NO. 3-96-CV-2593

DALLAS COUNTY HOSPITAL DISTRICT d/b/a PARKLAND MEMORIAL HOSPITAL

AFFIDAVIT OF WILLIAM L. NELLIS

STATE OF CONNECTICUT

COUNTY OF WINDHAM

BEFORE ME, the undersigned authority, appeared WILLIAM L. NELLIS, who being sworn, deposed as follows:

1. My name is William L. Nellis. I am of sound mind, over 18 years old and capable of giving this affidavit. I am an expert witness retained by the plaintiffs in Case No. 3-96-CV-2593: Crofts, et al. v. Dallas County Hospital District, et al. I reside at 124 Indian Spring Road. Woodstock CT 06281 and my CV is attached herein.

2. I received my Bachelor of Science Degree from the University of California at Los Angeles in Business Education in 1954. I am past member of The President's Association, The American Management Association, The Hospital Association of

Pennsylvania-Committee of Nursing, and the Massachusetts Hospital Association including being an officer and member of that organization's executive committee. I am a member of The American College of Healthcare Executives and I am Board Certified by that organization-holding the designation Certified Healthcare Executive (CHE). I am also a member of the American Hospital Association.

3. I began my hospital administration career at Mound Park Hospital, now known as Bayfront Medical Center, in St. Petersburg, Florida in 1961. I worked in hospital administration and left in 1962.

4. I worked in hospital administration at Beth Israel Hospital in Boston, Massachusetts from 1963 to 1966. Beth Israel Hospital is a Harvard University-Medical School teaching hospital. I then left Beth Israel and became the President of Melrose-Wakefield Hospital in Massachusetts. I was in charge of the day-to-day operation of the hospital as administrator and operated the hospital for the Board of Trustees.

5. I left Melrose Wakefield Hospital in 1979 and became the Administrator and Hospital Director at Hahnemann University Hospital in Philadelphia, Pennsylvania-operating the hospital for Hahnemann University-a medical school and university of the health sciences. I was involved in all aspects of the hospital's management and operation including but not limited to all inpatient and outpatient services, policies and procedures, contract services inside and outside the hospital, residency program management, Joint Commission on Accreditation of Healthcare Organizations-hospital accreditation and state license inspections. I chaired The Medical-Legal Committee for the hospital and The Fire and Safety Committee for the University. I met and worked with the

Chairpersons of such departments as Surgery, Medicine, Cardiology, Emergency Medicine, Psychiatry and Radiology in matters related to but not limited to service contracts, physician coverage, budgets, clinical management, facilities, rules and regulations, policies and procedures, equipment, personnel and residency training program management.

6. While at Hahnemann University Hospital, I was responsible for seeing that the hospital maintained its accreditation by the Joint Commission on Accreditation of Healthcare Organizations and making sure that the hospital was in compliance with Joint Commission Standards. I was responsible for the hospital's Policies and Procedures Manual and insuring that the policies and procedures were known to the staff, patients and visitors and that the policies and procedures were enforced and followed as written.

7. I left Hahnemann University in 1983 and became a consultant to the health care industry by performing consulting work in such areas as hospital and managed care standards, physician and provider credentialing, risk management, quality assurance, the creation and application of hospital policies and procedures and the provision of medical and surgical services to patients by way of physician and clinical staff services.

8. I am the founder and owner of Integrated Health Markets, Inc., Nellis Enterprises, Inc. and Center for Professional Medical Review, Inc. I remain involved in consulting for hospitals, managed care organizations, health care manufacturers and the legal community throughout the United States. I am familiar with the bylaws, rules and regulations and policies and procedures required to operate a hospital as well as their application and use by the hospital's

physicians, clinical staff, employees, patients and visitors.

9. I am familiar with the facts of the above-captioned cause of action. I have closely examined the Complaint, the Defendants' Answers to the Complaint and the hospital's Motion for Summary Judgment and Brief in Support. In addition, I have reviewed portions of Mr. Crofts' medical records which were attached to Plaintiff's Response to Defendant's Motion for Summary Judgement and Brief in Support thereof, a policy/procedure entitled "SUICIDAL PRECAUTIONS FOR PATIENTS ON GENERAL NURSING FLOORS," which was also attached to Plaintiff's Response and Brief in Support thereof, house staff schedules, and various affidavits.

10. It is my opinion that the hospital failed to provide facilities that were appropriate to meet the clinical and behavioral needs of patients such as Mr. Crofts and including Mr. Crofts, including but not limited to patient room windows that: (a) were locked with security devices and/or (b) had security screens installed.

11. It is my opinion that the hospital failed to provide services that were appropriate to meet the clinical and behavioral needs of patients such as Mr. Crofts and including Mr. Crofts, including but not limited to when and how to use restraints to insure his safety.

12. It is my opinion that the hospital failed to have adequate policies and procedures that would address and insure the safety of patients such as Mr. Crofts and including Mr. Crofts, and specifically in this case address the management of: (a) Mr. Crofts' underlying clinical/psychiatric condition and (b) Mr. Crofts' inappropriate and aggressive behavior on the nursing

unit up to the time of the incident which led to his death.

13. It is my opinion that the hospital failed to have properly trained personnel to meet the clinical and behavioral needs of patients such as Mr. Crofts and including Mr. Crofts, including: (a) skills in direct patient care management and (b) skills to control Mr. Crofts' physical movement and behavior while on the nursing unit.

14. It is my opinion that the hospital failed to properly supervise the individuals providing both clinical and behavioral care services to patients such as Mr. Crofts and including Mr. Crofts, and in addition, supervise the individual assigned to continuously monitor his behavior while in his room.

15. It is my opinion that the hospital through its actions and/or lack of actions showed a conscious indifference to Mr. Crofts clinical and behavioral needs.

16. I am qualified as an expert in hospital administration and management and if called to testify, I will testify to all of the opinions listed above.

17. To the best of my knowledge, none of my professional opinions have been disqualified in any court of law.

FURTHER AFFIANT SAITH NOT.

/s/ William L. Nellis
William L. Nellis

SWORN TO AND SUBSCRIBED before me, this 9th day of September, 1998.

/s/ Barbara P. Rich

NOTARY PUBLIC, State of Connecticut at Large

Barbara P. Rich
NOTARY PUBLIC (printed name)

CERTIFICATE NO: 70949

BARBARA P. RICH
NOTARY PUBLIC
My Commission Expires Oct. 31, 1999

WLN & ASSOCIATES
124 Indian Spring Road, Woodstock, CT 06281-2608

Phone: 860-974-3815
Fax: 860-974-3816
E-Mail: wnellis@sprynet.com

RESUME

WILLIAM L. NELLIS, CHE

EDUCATION

1954 **Bachelor of Science, Business/Education**
University of California, Los Angeles, California

EXPERIENCE

Founder and Owner of:

1988 **Integrated Health Markets, Inc., WLN & Assoc. and Center or Professional Medical Review, Inc.**
Woodstock, Connecticut

1984 **Milway Corporation**
Radnor, Pennsylvania

Providing health care consulting services to:

-Providers
-Payors
-Manufacturers

Offering specialized services in:

-Risk management
-Quality assurance

-Utilization Review
-Medical Staff management
-Delivery systems
-Marketing/marketing research
-Hospital operations
-Payor negotiations

Client base includes:

- Major pharmaceutical and product manufacturers
- Hospital groups, chains, independent institutions including:
  - University and community based hospitals
  - Health centers and clinics
  - Managed care organizations-HMO's/PPO's

1979 The Hospital Director & Vice President for Health Services
Hahnemann University Hospital
Philadelphia, Pennsylvania

600 bed, university owned medical center, $77 million annual operating budget, 3500 employees, 300 residents

Directed multi-specialty, tertiary care hospital, affiliate hospital network and broad base of contractual services to other providers and consumers of health care services

- Implemented major management reorganization and restructuring

- **Acted as catalyst in turning around a financially troubled hospital to a fiscally viable organization**

- **Worked closely with financial managers to increase cost effectiveness of hospital operations**

- **Developed forum, subject and problem tracking system for all items requiring attention of Hospital Management Group**

- **Designed budgeting mechanism by functional category/group for effective coordinated management and planning**

- **Created control system which effectively tracks each element of day-to-day performance of cost and income centers**

- **Created and developed hospital management research and development department to specifically create patient management system designed on principles of industrial production management**

- **Handled extensive formal labor union contracts and labor/management activities**

- **Served as President of laundry owned by five hospitals**

- **Created and/or expanded various patient care services including design, construction and occupancy of parts of 21 story tower and renovation of existing 19 story tower**

- **Planned and managed Certificate of Need process which resulted in acquisition of a 20 megavolt linear accelerator, full body scanner, expanded cardiac cath equipment, creation of electro-physiology department and installation of 24 bed short-stay crisis intervention unit for catchment area of West Philadelphia**

1966 **President**
Mellrose-Wakefield Hospital
Melrose, Massachusetts

280 bed community hospital, $19 million annual operating budget, staff of 1000

Under direction of the Board of Trustees, managed all aspects of suburban community, acute care hospital

- **Established industrial concepts of management and reorganized administrative structure of the hospital**

- **Direct two major construction programs and one large hotel acquisition**

- **Worked with medical staff in developing concept of Surgical Day Care and Maternity Day Care which received nationwide recognition (Our program started the movement toward ambulatory surgery and the development of Surgicenters)**

- **Created new patient care techniques**

- **Developed comprehensive mental health programs**

- **Increased volume, quality and variety of patient care services to**

the community

1963 **Administrative Manager**
Beth Israel Hospital
Boston, Massachusetts

452 bed, teaching, Harvard affiliated hospital

Created and directed Unit Management Program

1962 **Business Manager and Controller**
Hospital Division, City of St. Petersburg
St. Petersburg, Florida
(now known as Bayfront Medical Center)

Performed all business and supply functions for second largest hospital in Florida; managed general and cost accounting, budget, internal auditing, insurance and financial analysis

1955 **Various positions in oilwell drilling, from roughneck through ranks to Administrative Manager. Assignments included California, Texas, Canada, Iran and Turkey**

Professional Membership and Activities

The President's Association (An affiliate of the American Management Association)

- **Co-Chairman, "The CEO and the Board of Directors" (1975)**

The American Management Association

- **Co-Chairman, "Urban Affairs Conference"**

The American College of Healthcare Executives

Hospital Association of Pennsylvania

- **Committee on Nursing (1981 - 1984)**

Delaware Valley Hospital Council

- **Committee on Prepayment and Hospital Reimbursement (1981 - 1984)**

- **Chairman, Task Force of Nursing (1980 - 1984)**

Massachusetts Hospital Association

- **Secretary and Member of the Executive Committee (1978 - 1979)**

- **Member, Board of Trustees (1977 - 1979)**

- **Chairman, Chapter 409 Committee (1978 - 1979)**

- **Member, Council Health Care Finance (1970 - 1974)**

736, Inc. (Multi-community adolescent treatment service organization)

- **President and Member of the Board of Trustees (1972 - 1979)**

Community Mental Health & Retardation Area Board of Eastern Middlesex

- **President and Member (1967 - 1973)**

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